

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

August 1, 2002

IN RE:

PETITION OF TENNESSEE UNE-P
COALITION TO OPEN A CONTESTED
CASE PROCEEDING TO DECLARE
SWITCHING AN UNRESTRICTED
UNBUNDLED NETWORK ELEMENT

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DOCKET NO.
02-00207

ORDER SUSPENDING PROCEDURAL SCHEDULE

This docket came before the Pre-Hearing Officer¹ for consideration of the *Agreed Motion Regarding Filing Deadlines During the Week of July 1st Through July 5th, 2002* filed on July 8, 2002, *BellSouth Telecommunications, Inc.'s Motion to Hold Proceeding in Abeyance* filed on July 12, 2002, *Response to Motion to Hold Proceeding in Abeyance* filed on July 23, 2002, and *Joint Motion to Extend Filing Date* filed on July 29, 2002.

On June 19, 2002, the Pre-Hearing Officer² issued an *Order Granting Extension* in which the Pre-Hearing Officer directed the parties to file responses to discovery requests on July 3, 2002.³ In a notice issued on May 31, 2002, the Pre-Hearing Officer directed that the parties file pre-filed direct testimony on July 12, 2002, file pre-filed rebuttal testimony on July 26, 2002, and reserve August 26 through 30, 2002 for a hearing.

¹ During the July 23, 2002 Authority Conference, a panel of the Tennessee Regulatory Authority consisting of Chairman Sara Kyle and Directors Deborah Taylor Tate and Ron Jones unanimously voted to appoint Director Ron Jones as the Pre-Hearing Officer for the purpose of preparing this docket for hearing by the panel.

² At this time former Director Melvin J. Malone was acting as Pre-Hearing Officer.

³ *Order Granting Extension*, p. 2 (Jun. 19, 2002).

On June 28, 2002, the Pre-Hearing Officer issued an *Initial Order Resolving Discovery Disputes*. As part of the ruling, the Pre-Hearing Officer directed the Tennessee Regulatory Authority (“Authority”) to “promulgate data requests to issue to Network Telephone Corp., Business Telecom, Inc., XO Tennessee, Inc., Adelphia Business Solutions of Nashville, L.P. and any other [competing local exchange carrier] which the Authority determines should respond.”⁴

On July 8, 2002, the parties filed the *Agreed Motion Regarding Filing Deadlines During the Week of July 1st Through July 5th, 2002*. In the motion, the parties agreed to modify the previously set due dates such that the parties would file responses to discovery on July 10, 2002, pre-filed direct testimony on July 19, 2002, and pre-filed rebuttal testimony on August 2, 2002. In support of their motion, the parties cited the fact that they had been informed that the Authority would not accept filings from July 1 through July 5, 2002 due to the extensive closure of the government of the State of Tennessee.⁵

On July 12, 2002, BellSouth Telecommunications, Inc. (“BellSouth”) filed its motion to hold proceeding in abeyance. In the motion, BellSouth first contends that the procedural schedule does not permit the Authority to develop a complete evidentiary record given that the ordered data requests have not yet issued. Next, BellSouth asserts that the Authority should not expend its limited resources to resolve the issue presented in this docket because the D.C. Circuit Court of Appeals recently issued an opinion in *United States Telecom Association v. FCC* invalidating the standard of the Federal Communication Commission (“FCC”) for determining whether an incumbent carrier must unbundle a network element.⁶ In response, the Tennessee

⁴ *Initial Order Resolving Discovery Disputes*, p. 23 (Jun. 28, 2002).

⁵ *Agreed Motion Regarding Filing Deadlines During the Week of July 1st Through July 5th, 2002*, 1 (Jul. 8, 2002).

⁶ *BellSouth Telecommunications, Inc. Motion to Hold Proceeding in Abeyance*, pp. 1-2 (Jul. 12, 2002) (referring to *United States Telecom Ass’n. v. FCC*, 419 F.3d 415 (D.C. Cir. 2002)).

UNE-P Coalition⁷ asserts that there is sufficient time to develop the evidentiary record and argues that the D.C. Circuit Court of Appeals did not vacate the FCC's rules.⁸

On July 29, 2002, the parties filed the *Joint Motion to Extend Filing Date*. The parties request that the Pre-Hearing Officer extend the August 2, 2002 date for filing rebuttal testimony. The parties explain that by granting the extension, the Pre-Hearing Officer will avoid the need to supplement that testimony once the ordered data requests are issued and responses are received from the competing local exchange carriers.⁹ The parties request further that a status conference be scheduled following the deadline for the filing of responses to the data requests for the purpose of discussing the filing dates for pre-filed rebuttal testimony and dates for a hearing.

The Pre-Hearing Officer finds that good cause exists for the requested extension and that the extension will not unreasonably delay the outcome of this docket. Therefore, the Pre-Hearing Officer finds that the *Joint Motion to Extend Filing Date* is granted such that all dates previously agreed to or reserved in this docket are suspended pending resolution of *BellSouth Telecommunications, Inc.'s Motion to Hold Proceeding in Abeyance*. Additionally, this ruling renders the *Agreed Motion Regarding Filing Deadlines During the Week of July 1st Through July 5th, 2002* moot.

IT IS THEREFORE ORDERED THAT:

1. All dates previously agreed to or reserved in this docket are suspended pending resolution of *BellSouth Telecommunications, Inc.'s Motion to Hold Proceeding in Abeyance*.

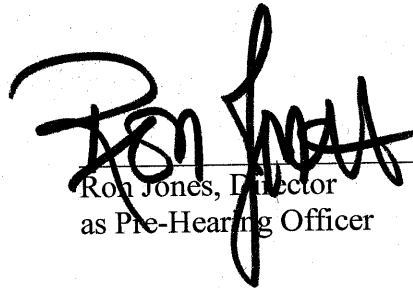
⁷ The UNE-P Coalition consists of NewSouth Communications, Corp; Birch Telecom of the South, Inc.; Ernest Communications, Inc.; Access Integrated Networks, Inc.; MCImetro Access Transmission Services, LLC; MCIWorldCom Communications, Inc.; Z-Tel Communications, Inc; and AT&T Communications of the Southeast, Inc.

⁸ *Response to Motion to Hold Proceeding in Abeyance*, pp. 1-2 (Jul. 23, 2002).

⁹ *Joint Motion to Extend Filing Date*, p. 2 (Jul. 29, 2002).

2. The *Agreed Motion Regarding Filing Deadlines During the Week of July 1st Through July 5th, 2002* filed on July 8, 2002 is moot.¹⁰

3. Any party aggrieved by the decision of the Pre-Hearing Officer in this docket may file a petition for reconsideration with the Pre-Hearing Officer within fifteen (15) days from the date of this Order.



Ron Jones, Director
as Pre-Hearing Officer

¹⁰ The parties have previously submitted filings in accordance with the schedule set forth in the *Agreed Motion Regarding Filing Deadlines During the Week of July 1st Through July 5th, 2002*. These filings shall be considered as timely filed.